S.B. Civil Second Appeal No. 3/2004

Veerchand Laxminarain Vs. Shivnarain & Ors.

Date of Order :: 04-10-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. R.K. Thanvi, for the appellant.

Mr. J.R. Patel, for the respondents.

Heard learned counsel for the parties.

The courts below have concurrently found personal bonafide necessity of the shop in dispute for one of the son of the plaintiff. Though, the courts below have used word 'shop' in the judgments, but it is clear from the entire case set up by the plaintiff and contested by the defendant that they understood the meaning of the shop very well as it describes the rented premises as a whole in possession of defendant as tenant. The two courts below concurrently after appreciation of the evidence found that the plaintiff has not proved any need for one of his son namely Gopal Narain.

The first appellate Court relied upon the statement of the defendant himself and held that when defendant also admitted that partial eviction cannot satisfy need of any of the party. In view of the above, first appellate Court held that partial eviction of the premises is not possible which makes it clear that the premises were treated as one and found not divisible. Hence, the decree is for the entire rented premises. The courts below have recorded the finding after appreciation of the evidence and, I do not find that this appeal involves any

substantial questions of law, therefore, this appeal deserves to be dismissed.

At this stage, learned counsel for the appellant submitted that the tenant-appellant is doing business in the premises almost about 50 years, therefore, he may be given time of two years for vacating the premises. Learned counsel for the respondent-landlord submits that the appellant is not doing business in the shop in dispute and his sons are also doing their separate business, therefore, the time of two years may not be granted.

After considering the facts of the case, it is ordered that the decree under challenge shall not be executed upto 31.3.2006 upon furnishing a written undertaking within one month from today by the tenant before the trial Court, undertaking that the appellant shall handover the vacant possession of the property in dispute to the landlords on or before 1.4.2006. The appellant shall also furnish the undertaking that he shall not part with possession of the property and shall not sub-let the property to anyone else. Further, the appellant shall pay the mense profit month by month by 15th day of each calender month directly to the landlord or may deposit the amount before the trial Court. In case of non furnishing of the undertaking and in case of default in payment of mense profit, the decree shall be executed forthwith.

With above concession, the appeal of the appellant is dismissed.

[PRAKASH TATIA],J.

Praveen